



Australian Government  
Attorney-General's Department

# **Cybercrime and Electronic Evidence**

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# Importance of Mutual Assistance

- Mutual assistance is the formal government to government process to obtain electronic evidence
- The evidence obtained as a result of mutual assistance is often critical in criminal proceedings or prosecutions
- Electronic evidence can show who owned an account that committed a criminal act or what criminals communicated about a crime

# Obtaining Electronic Evidence

- Electronic evidence is commonly held on servers in foreign countries
- A mutual assistance request is required to obtain electronic evidence
- It takes a long time to obtain electronic evidence!



# Types of Electronic Evidence

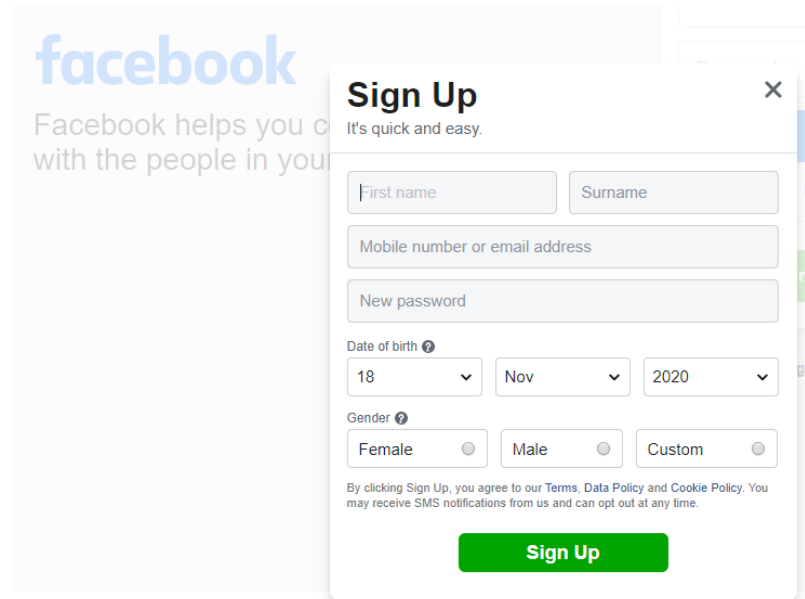
- Internet data is electronic evidence and may be:
  - Non-content data
  - Content data
- Internet data comes from communication service providers (CSPs)



# Non-Content Data

- Subscriber details associated with an account

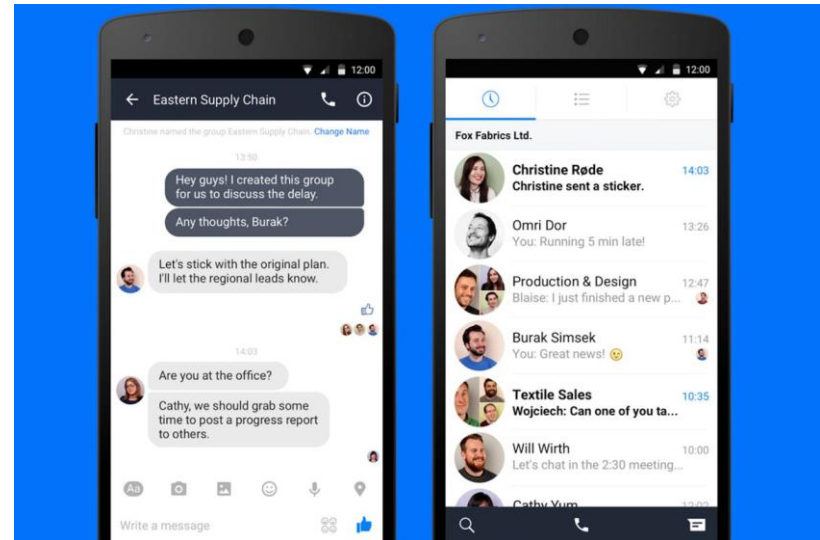
- Name
- Email address
- Phone number
- Date of birth
- IP addresses



The image shows a screenshot of the Facebook sign-up process. The background is a blurred Facebook homepage with the text "facebook" and "Facebook helps you connect with the people in your life". Overlaid on this is a "Sign Up" modal window. The modal has a title "Sign Up" and a subtitle "It's quick and easy." Below the title are several input fields: "First name" and "Surname" (two separate boxes), "Mobile number or email address", and "New password". Underneath these is a "Date of birth" section with three dropdown menus for day (18), month (Nov), and year (2020). Below that is a "Gender" section with three radio button options: "Female", "Male", and "Custom". At the bottom of the modal, there is a green "Sign Up" button. A small disclaimer at the bottom of the modal reads: "By clicking Sign Up, you agree to our Terms, Data Policy and Cookie Policy. You may receive SMS notifications from us and can opt out at any time."

# Content Data

- Includes the actual content of the account created by the user
- Photographs/videos
- Messages
- GPS location data
- Standard of 'Probable Cause'



# Probable Cause

- In order to obtain content records from the United States, we need to meet the legal standard of ‘probable cause’.
- Probable cause is a **higher** threshold than ‘reasonable grounds to believe’
- In order to meet probable cause, a MAR will need to contain specific and detailed information ‘*sufficient to warrant a prudent person’s belief that evidence of a crime would be found in the search*’
  - account active for time for which records are sought
  - account actively used in relation to the offending conduct.
- Reasonable grounds: offence committed / evidence in records

# Geofence Requests

- Specific to Google
- Google can identify which devices were in a geographical location at a specific time
- You must have the geographical location and date and time of the offending
- Google will return a list of devices which were in the locations



# Preservation Requests

- A preservation request is a 'snapshot' of an account which is saved by the CSP
- If a user deletes their account, the evidence will be preserved
- Make a preservation request **as soon as possible**
- Law enforcement are responsible for preservation requests

# Portals/Service Providers

- CSPs have online portals for law enforcement to make preservation requests
- The portals are only for law enforcement
- CSPs do not send reminders

## Law Enforcement Online Submissions

Oath's Law Enforcement Online Submissions (LEOS) system permits verified law enforcement agents and government officials to securely submit legal requests, including emergency disclosure requests in cases involving a danger of death or serious physical injury.

LEOS can be used to submit legal process for data held by Oath Holdings Inc. (formerly Yahoo) and Oath Inc. (formerly AOL).

Email address

Password

[Log In](#)

[Forgot Password?](#)

Don't have an account? [Create New Account](#)

YAHOO! AOL.

# Timeframes

- The average timeframe to obtain electronic evidence is 9 – 12 months
- If a matter is urgent, let the foreign country know and explain why e.g. upcoming trial
- COVID-19 has impacted some countries ability to provide evidence

